HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.9400 of 2009

ORDER:-

The Criminal Petition is filed under Section 482 Cr.P.C., to quash all further proceedings in C.C.No.845 of 2009 on the file of the II-Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Sections 420 and 468 IPC.

2. The petitioners are A.2 and A.3 and the 3rd respondent is A.1. The 2nd respondent is the *de facto* complainant. The 2nd respondent/ *de facto* complainant filed a private complaint on 07-09-2004 before the II-Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioners and 3rd respondent alleging that they committed the offences punishable under Sections 420 and 468 IPC. The complaint was referred to P.S.Abids for investigation. The police registered the case in Cr.No.476 of 2004 and after completing the investigation, filed a final report referring the complaint as false. Thereafter, the 2nd respondent filed a protest petition and after recording the sworn statement of the 2nd respondent, the learned Magistrate took cognizance of the case and hence the petitioners being A.2 and A.3 filed the petition to quash the same.

3. The allegations, in brief, are as under:-

The petitioners/A.2 and A.3 were working in the State Bank of India, Agri Business Branch, Abids. M/s.Jagadambay Agri Genetics Ltd., has obtained a loan from the bank and the 2nd respondent/ *de facto* complainant and his wife Shakuntala Bhageria are said to have stood as guarantee for the loan and mortgaged their immovable properties with the bank. The principal borrower committed default in payment of the loan amount. As in the year 1998, the Company fell due in a sum of Rs.3,60,33,193.56 ps. The bank has initiated the proceedings under SARFAESI Act and filed O.A.No.218 of 1998 before Debts Recovery Tribunal, Bangalore. Subsequently, the said case was transferred to the Debts Recovery Tribunal at Hyderabad and was registered as O.A.No.1419 of 1999. The said O.A. was disposed of by the Debts Recovery Tribunal, Hyderabad, on 26-10-2006.

4. The contention of the 2nd respondent/*de facto* complainant is that the petitioners/accused being bank officials in collusion with 3rd respondent/A.1 have forged his signature on the loan documents and that he did not stand as guarantee to the loan. The specific contention of the 2nd respondent/ *de facto* complainant is that the petitioners/accused and A.1 have informed his wife that her husband/2nd respondent has already stood as guarantee and signed the documents and by making such a fraudulent representation, they obtained the signature of the wife of the 2nd respondent/*de facto* complainant on 16-02-1995. It is further alleged that neither the 2nd respondent nor his wife can read or write English and without knowing the contents of the documents, they signed on the papers on 16-02-1995. The title documents of the properties were also submitted.

5. The contention of the petitioners/accused is that having stood as guarantee for the loan which was obtained by the Company, the 2nd respondent has started contending that he did not stood as guarantee and that his signature was forged on the documents filed by the bank. It is further submitted that the contention of the 2nd respondent/*de facto* complainant that his wife signed on the documents on being told that her husband has already signed is difficult to be believed. Admittedly, all the loan documents were signed by the wife of the 2nd respondent and the title deeds of their properties were also handed over to the bank. As a matter of fact, it

is the 2nd respondent/ *de facto* complainant who first signed all the documents and only thereafter his wife signed the documents standing guarantee for the loan.

6. It is submitted that after the O.A. filed by the Bank was finally decided by the Debts Recovery Tribunal, Hyderabad, on 26-10-2006, the 2nd respondent/*de facto* complainant filed a review petition in I.A.No.902 of 2006 by raising similar contentions. The Debts Recovery Tribunal has considered the contention of the 2nd respondent/ *de facto* complainant and on 29-02-2008 dismissed the review application holding that the 2nd respondent/*de facto* complainant has filed the petition with a view to create frivolous litigation and dismissed the petition with exemplary costs of Rs.5,000/-. Thereafter, the 2nd respondent/ *de facto* complainant preferred M.A.No.119 of 2008 on the file of the Debts Recovery Appellate Tribunal at Chennai. The appellate Tribunal by taking into consideration the material on record and the affidavit filed by the 2nd respondent/ *de facto* complainant and his wife before the High Court of A.P., in W.P.No.33060 of 1998, dismissed the appeal of the 2nd respondent/*de facto* complainant holding that the appellant (2nd respondent herein) has no regard for truth and he is making attempts only with a *mala fide* intention of protracting the proceedings so as to delay and defy the recovery measures taken by the bank. The Debts Recovery Appellate Tribunal, Chennai, dismissed the appeal by further imposing exemplary costs of Rs.5,000/-.

7. It is further submitted that the bank has filed W.P.No.33060 of 1998 against the Company. The 2nd respondent/*de facto* complainant and his wife contested the said writ petition and filed their counters. In the counters filed by the 2nd respondent herein and his wife in the said Writ Petition on 26-04-1999, the 2nd respondent/*de facto*

complainant and his wife have admitted that they executed the loan documents. In the counter affidavit, which was sworn to by the 2nd respondent/ *de facto* complainant, it is specifically mentioned in para 4 that he is a guarantor and the 4th respondent in the writ petition (wife of the 2nd respondent/*de facto* complainant) is a mortgagor.

8. The above record clearly shows that the company M/s.Jagadambay Agri Genetics Ltd., has obtained a loan from the bank and as of 1998, they fell due in a sum of Rs.3,60,33,193.56 ps. The 2nd respondent/*de facto* complainant and his wife stood as guarantee and mortgaged their properties. When the bank initiated the proceedings under SARFAESI Act, the 2nd respondent/*de facto* complainant contended that the petitioner/accused being the bank officials have forged his signatures and created the loan documents. He does not deny the fact that his wife signed as mortgagor and handed over the title deeds of their properties. The Debts Recovery Tribunal at Hyderabad has disbelieved his contention and imposed costs of Rs.5,000/-. Aggrieved by that, the 2nd respondent/*de facto* complainant carried the matter to Debts Recovery Appellate Tribunal, Chennai which also dismissed the appeal by further imposing exemplary costs of Rs.5,000/-. It is clear that the present criminal proceeding is manifestly attended with *mala fides* and is maliciously instituted with an ulterior motive for avoiding the liability which has already been fastened on the 2nd respondent/*de facto* complainant. In that view of the matter, the contention of the 2nd respondent/*de facto* complainant that the petitioners/accused being the bank officials have forged his signature in the loan documents cannot be believed.

9. The petitioners/A.2 and A.3 are therefore entitled to the relief and further proceedings against them in C.C.No.845 of 2009 on the file of the II-Additional Chief Metropolitan Magistrate, Hyderabad, will be a clear abuse of process of law and hence the proceedings in

C.C.No.845 of 2009 insofar as they are against the petitioners/A.2 and A.3 are liable to be quashed.

10. In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.845 of 2009 on the file of the II-Additional Chief Metropolitan Magistrate, Hyderabad, insofar as they are against the petitioners/A.2 and A.3.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K. Jaiswal, J

11th September, 2015
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